IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10974 of 1993
with
CIVIL APPLICATION No 4445 of 1998

AND
SPECIAL CIVIL APPLICATION No 10975 of 1993
with
CIVIL APPLICATION No 4446 of 1998

AND
SPECIAL CIVIL APPLICATION No 10976 of 1993
with
CIVIL APPLICATION No 4448 of 1998

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
S.T. WORKERS' UNION

Appearance:
MR MD PANDYA for the Petitioner
MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 20/09/2004

COMMON ORAL JUDGEMENT

The petitioner in this group of petitions is the Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation"). The Corporation challenges the common judgment and award dated 25th March, 1988 passed by the Industrial Tribunal, Ahmedabad (hereinafter referred to as "the Tribunal") in Reference (IT) Nos.997/1984, 1072/1984 and 1080/1984.

As this group of petitions under Article 227 of the Constitution of India has been preferred after a considerable delay, learned advocate Mr.Pandya has relied upon the averments made in paragraph 12 of the petition. It is stated that the claimants in the said References were absorbed in regular time-scale on different dates in the years 1987-1988. As the Corporation was negotiating with the Union, the petitions were not preferred soon after the date of the impugned award or within reasonable time. Having regard to the far reaching consequences of the award and the financial liability involved, the Corporation decided to challenge the impugned award before this Court.

Learned advocate Mr.Pandya has also submitted that the challenge is confined to that part of the award by which the Corporation is directed to create supernumerary posts and to absorb the claimants in regular time-scale on completion of 240 days' service in the Corporation.

The industrial dispute relevant for the purpose of these petitions raised by the workmen's union was with respect to the claim made by the workmen (the drivers and the conductors) who had completed 240 days' service. The reference made to the Tribunal, inter alia, was "whether the said employees who had completed 180 days' service should be considered as permanent employees and whether they should be given the benefit as permanent employees as per the Settlement". The Settlement referred to in the said Reference was of 23rd November, 1984 and was in force upto 31st July, 1987. Clause 29 of the said Settlement provides, inter alia, that the candidate on the wait-list shall be appointed as a Badli worker in seriatim; the candidate appointed as Badli worker if has worked on all days when he is offered work atleast for one year will be absorbed as daily wage employee against the vacant post keeping in view his performance and conduct; a daily wage employee if has worked atleast for

240 days will be absorbed in regular time-scale against the vacant post keeping in view his performance and conduct as daily wage employee. Considering the said Settlement, the Tribunal held that the said Settlement was not intended to flout the rights of the workmen. The workers who had worked for number of years could not be denied the status of daily rated workers or of permanent workers or absorption in time-scale because there were no available vacant posts. The Tribunal proceeded on assumption that over the years number of persons must have retired or resigned or died in harness. It was, therefore, not possible to hold that the vacancies had not occurred. The Tribunal held that the Badli workers, if their work and conduct is found to be satisfactory, would be taken up as daily wage employees. The Tribunal also held that in view of the said Clause 29, the seniority of the Badli workers was also immaterial. In other words, the Tribunal held that on completion of one year's service a Badli worker would be entitled to appointment as daily wage employee if his service is found to be satisfactory. The Tribunal has also invoked the principles of "equal pay for equal work". Consequently, the Tribunal has directed that the employees mentioned in the schedule be treated as daily wage employees after completion of one year's service as Badli workers; on completion of 240 days' service as daily wage employees the said employees shall be entitled to the benefits which are available to the permanent employees.

In answer to the contention raised by the Corporation that sufficient number of vacant posts were not available, the Tribunal observed that such contention could be accepted if it were the matter of one or two or few Badli workers but not in the present case. The claimants in the present case are 69 in number. The Tribunal also observed that if that be the case the Tribunal would be required to assist the workmen by directing the Corporation to create supernumerary posts atleast till the Corporation absorbs the claimants in the permanent posts.

Learned advocate Mr.Pandya has submitted that the Tribunal has committed a manifest error in proceeding on assumption that the vacancies had arisen and the vacant posts were available. The Tribunal has also committed material irregularity in construing clause 29 of the Settlement. The Tribunal has overlooked the requirement of availability of vacant posts. He has submitted that the said Settlement did not envisage creation of supernumerary posts with a view to appointing Badli

workers as daily wage employees or with a view to absorbing daily wage employees in regular time-scale. He has submitted that creation/abolition of posts is necessarily an administrative function. The Court/Tribunal has no jurisdiction to interfere in such administrative matters of the Corporation. He has also submitted that one of the terms of the said Settlement i.e. Clause 87.7 did provide that no employee or union will raise any general demand during the period from 1st March, 1982 to 31st July, 1987. If any general demand were pending before the Conciliation Officer, Industrial Court or Tribunal, it shall be deemed to have been withdrawn. Mr.Pandya has submitted that the Tribunal has circumvent the said term by holding that the demand raised in the present set of references was individual to each workman and cannot be said to be a general demand. In support of his contention, Mr.Pandya has relied upon the judgment of the Full Bench of this Court in the matter of Amreli Municipality v/s. Gujarat Pradesh Municipal Employees Union (Special Civil Application No.5746 of 1999 and allied matters decided on 9th July, 2004; Coram: M/s.Kshitij R.Vyas, A.R.Dave and K.S.Jhaveri, JJ.).

The petitions are contested by the learned advocate Mr.Upadhyay. He has submitted that the petitions deserve to be dismissed on the grounds of delay, latches and acquiescence alone. He has further submitted that the concerned claimants have already received the benefits under the impugned award. Therefore also, the challenge to the impugned award in the present petitions is not maintainable.

Mr.Upadhyay has supported the impugned judgment and award of the Tribunal and has submitted that the Tribunal has correctly construed Clause 29 of the Settlement and the underlying intention.

I am of the view that the delay in challenging the impugned judgment and award of the Tribunal has been satisfactorily explained by the averments and submissions made in paragraph 12 of the petitions. I agree that the Tribunal has manifestly erred in construing the aforesaid Clause 29 of the Settlement dated 23rd November, 1984. The said Clause 29 specifically provided that a Badli worker would be appointed as daily wage employee on availability of vacant post and the daily wage employee would be absorbed in regular time-scale against the available vacant post. Thus, availability of vacant post was a condition precedent before any Badli worker could claim appointment as daily wage employee or before any

daily wage employee claimed absorption in regular time-scale. In the present case, the Tribunal has overlooked the requirement of the availability of vacant posts. The Tribunal has also erred in rejecting the plea of the Corporation that sufficient number of vacant posts were not available on a spacious presumption that over the years many employees must have retired or resigned from service or have died in harness. In absence of any evidence on record, the decision rendered on such presumption would become vulnerable. In my view, the Tribunal has also erred in brushing off the contention with respect to Clause 87.7 of the Settlement. It is evident that such term was required to be included in the Settlement with a view to giving it stability. A settlement arrived at between the employer and the union of the employees has statutory force. Unless such settlement is granted stability/continuity, demand raised every now and then contrary to the terms of settlement would impair smooth administration and would lead to industrial unrest/chaos. In the present case, the demand made by the claimants was ex facie contrary to the aforesaid Clause 29 of the Settlement. Such claim, if accepted during the subsistence of the Settlement, would defeat the very purpose of the Settlement.

In the above referred matter of Amreli Municipality, the questions "whether the Industrial Tribunal or the Labour Court exercising powers under the Industrial Disputes Act is bound by statutory provisions or statutory rules while considering the question of regularisation or otherwise of the workman"; "whether in case of public employment as against the private employment, the Industrial Tribunal/Labour Court is empowered to regularise the services of the workman merely on the basis of a long continuance of ad-hoc/ temporary employee ignoring the fact that such recruitment was made against the sanctioned setup statutorily sanctioned and without following any prescribed procedure" and "whether the law laid down by this Court in the case of Kalol Municipality vs. Shantaben [(2003)2 GHCJ 397], which is based upon after considering the judgment of the Division Bench reported in the case of Natwarlal vs. Vadnagar Municipality [6 GLR 189] and unreported decision dated 27.4.1976 in the case of Savarkundla Municipality in Special Civil Application No.351 of 1976, is a good law or is impliedly overruled by the subsequent decisions of the Supreme Court" came to be referred to the Full Bench. The Hon'ble Full Bench answered the said questions and observed that "...The Labour Courts/Industrial Tribunals are required to pass orders consistent with the law laid

down by the higher Courts. Needless to say that the exercise of wide powers by Labour Court/Tribunal is always subject to or governed by the law laid down by the higher Courts...the decision rendered by the Division Bench in Kalol Municipality (supra) is impliedly overruled by the judgment of the Supreme Court in the case of N.S.Giri vs. Corporation of State of Mangalore [AIR 1999 SC 1958] as well as by the subsequent decisions...Even if it is held that the Labour Court/Industrial Tribunal has wide jurisdiction to alter service conditions, it can exercise such powers subject to the recruitment rules, availability of sanctioned posts and subject to the grant and limits of budgetary provisions. When there is no permanent post, no direction can be given to the authorities to absorb daily wage employees by creating new posts."

In view of this decision also the Tribunal has erred in traversing beyond its jurisdiction in issuing direction to appoint the claimants as daily wage employees from the dates they completed one year's service as Badli workers and to absorb them in regular time-scale on completion of 240 days as daily wage employees.

In view of the above discussion, the petitions should succeed. Rule nisi issued in each petition is made absolute in the following terms. The impugned award in so far as it directs appointment of the claimants as daily wage employees on completion of one year's service as Badli workers and their absorption in regular time-scale on completion of 240 days' service as daily wage employees and the direction to grant them consequential benefits and arrears, are quashed and set aside. The claim made by the workmen in the above references shall stand rejected to that extent. The parties shall bear their own cost. Civil Applications stand disposed of.

(Ms. R.M.Doshit, J.)

/sakkaf